

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

PRODUCERS AGRICULTURE
INSURANCE COMPANY,

Petitioner,

v.

DAVID FINNEMAN,

Respondent.

CASE NO.: 5:22-cv-05062-KES

**RESPONSE TO DEFENDANT'S
STATEMENT OF MATERIAL FACTS**

COMES NOW the Petitioner, Producers Agriculture Insurance Company ("ProAg"), and, in accordance with D.S.D. Civ. LR 56.1, submits its response to Defendant's Statement of Material Facts (ECF No. 27) as follows:

1. In crop year 2017, David Finneman applied for and was issued a policy of Whole Farm Revenue Protection (WFRP) through Plaintiff Producers Agriculture Insurance Company ("Pro Ag") under Policy No. 2017-46-987-1029811. *See Exhibit 1 (WFRP Policy) and Exhibit 2 (WFRP Schedule of Insurance).*

RESPONSE: Admitted.

2. On April 20, 2018, Pro Ag advised Finneman by letter that WFRP Policy No. 2017-46-987-1029811 was being voided, that Pro Ag's "Whole-Farm Liability" was being revised to zero, and that Pro Ag would be keeping 20 percent of his previously paid premium. *See Exhibit 4 (Pro Ag Determination Letter).*

RESPONSE: It is admitted that ProAg issued its coverage and claim determination letter (Exhibit 4) on April 20, 2018. The determination letter speaks for itself, and ProAg objects to the characterization thereof set forth in Defendant's statement.

3. On April 15, 2019, Finneman filed his Demand for Arbitration in accordance with the mandatory arbitration provision set forth in Section 33 of the Whole Farm Revenue Protection Pilot Policy challenging the April 20, 2018, indemnity determination of Producers Agriculture Insurance Company (“Pro Ag”). *See* Exhibit 3 (*Demand for Arbitration*); Exhibit 4 (*Pro Ag Determination Letter*).

RESPONSE: Admitted.

4. In accordance with Section 33(a) of the 2017 WFRP policy, these disputes were submitted to a privately administered arbitration before the Honorable David A. Allgeyer. *See* Exhibit 5 (*Scheduling Order and Notice of Hearing*).

RESPONSE: Admitted.

5. The “legally separated” issue was resolved at arbitration in favor of Finneman. *See* Exhibit 6 (*Arbitrator’s Order on Motion for Summary Disposition*).

RESPONSE: Admitted.

6. On June 20, 2022, the Honorable David A. Allgeyer issued his Findings, Determinations, and Award in favor of Finneman and awarding him \$97,781 plus simple interest after finding that Pro Ag did not follow WFRP policy and procedure and failed to act in good faith. *See* Exhibit 7 (*Findings, Determinations, and Award*).

RESPONSE: It is admitted that Mr. Allgeyer issued the Findings, Determinations, and Award (Exhibit 7) on June 22, 2022. The document speaks for itself, and ProAg objects to the characterization thereof set forth in Defendant’s statement.

7. The Federal Arbitration Act governs the confirmation or vacatur of an arbitration award. *See* 9 U.S.C.A. §1, *et seq.*

RESPONSE: Admitted.

8. Pro Ag filed its Petition for Vacatur, or in the Alternative, Nullification of the Arbitration Award, on July 19, 2022. *See* Petition [DE #1].

RESPONSE: Admitted.

9. David Finneman responded with his own Counterclaim seeking confirmation of the arbitration award pursuant to 9 U.S.C.A. §9. *See* David Finneman Answer and Counterclaim [DE #12].

RESPONSE: Admitted.

10. On May 24, 2023, Finneman filed a Complaint in the United States District Court for the Western District of South Dakota, challenging the failure and refusal of RMA to issue a non-compliance determination in absence of an equivalent 20(i)-provision. This Complaint is presently pending. *See David Finneman v. United States Department of Agriculture, Risk Management Agency, and Federal Crop Insurance Corporation*, Case No. 5:23-cv-05034-KES.

RESPONSE: Admitted.

Dated: November 22, 2023

Respectfully submitted,

SIEGEL, BARNETT & SCHUTZ, L.L.P.

/s/ Reed Rasmussen

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